

**BARBADOS**

**CRIMINAL DIVISION**

**Indictment No: 14 of 2013**

**The Queen vs. Evanson DeCoursey Armstrong**

**SENTENCING REMARKS**

*Evanson DeCoursey Armstrong,*

[1] On Friday, 22<sup>nd</sup> March, 2013 you were arraigned and pleaded “not guilty” to the murder of Elvin Thomas, but “guilty” instead to manslaughter.

[2] **The Facts:** Following your plea, the learned Director of Public Prosecutions, Mr. Charles Leacock, Q.C. outlined the circumstances surrounding the manner in which Elvin Thomas met his tragic and untimely death at your hands on the night of June 25<sup>th</sup>, 2012. He told the Court that several months prior to the killing, you had been retained by the deceased man to do some electrical works at his home at No. 7 Hothersal Crescent, St. Michael.

[3] A dispute arose between you and the deceased man regarding the performance of the work and during the altercation the deceased chopped and wounded you on your left shoulder, on a finger of your left hand and in your head.

[4] The deceased man was charged with unlawfully wounding you and appeared before the Magistrate on the 3<sup>rd</sup>, October, 2011 when he was granted bail. The Magistrate then adjourned the wounding case against the deceased man to January 18<sup>th</sup>, 2012 on which date he further adjourned the case to June 27<sup>th</sup>, 2012.

[5] The learned Director explained that having attended the Magistrate’s Court on two occasions, on the 3<sup>rd</sup> October, 2011, and again on the 18<sup>th</sup> January, 2012 when the case was

further adjourned, you appear to have formed the mistaken view that nothing was happening and that the case against the deceased man had been dismissed.

[6] On the 25<sup>th</sup> day of June, 2012, a mere 2 days before the wounding case against the deceased man was scheduled to come up again before the Magistrate, you took things into your own hands. According to the learned Director, having been seriously wounded by the deceased man, and laboring under the misapprehension that the justice system had not worked for you, you armed yourself with a firearm and went to the deceased man's home. As the deceased was not at home, you sat down by a nearby bus stop and awaited his arrival.

[7] On the deceased man's return home sometime after 9 p.m. that evening in the company of his family, the deceased man drove his vehicle into his garage. As he alighted from his vehicle, you walked up to him with the gun in your hand. Several gunshots were heard and the deceased man was fatally shot.

[8] The deceased man's daughter, Mariesa Bourne told police that just as her father got out of the jeep, she heard a loud explosion that sounded like a gunshot. On looking towards the rear of the vehicle, she recognized your face and saw smoke coming from the gun and saw you still firing. She told police that she also heard you say: *"Who tell you hit me. I tell you I gine come back for you"*.

[9] She continued to hear a number of loud explosions and after the shooting stopped she saw her father lying on the pavement, motionless and unresponsive. She identified you to police as Kebar, the man who had been shooting her father. She recognized you, she said, as the man who had been doing electrical work at the house, and the man whom her father had had an altercation with, and the man whom her father had been charged for wounding.

[10] The deceased man was pronounced dead at the scene at 11:13 p.m. later that night. The post mortem report of Pathologist, Dr. David Gaskin described 8 entry wounds about the deceased man's body, notably, at the base of the neck, the upper left chest, the stomach area, the left arm and the right hand. Death was attributed to multiple gunshot wounds.

[11] You were picked up by police and during the police investigations made oral statements and also gave a written statement admitting your role in the deceased's shooting death.

[12] In your written statement you told police, *inter alia*, that the deceased man had gotten out of his van and that you had walked up to him with the gun in your hand. You also said that the deceased had not apologized for cutting you but had told you some foolishness. According to you, you shot him about 4 or 5 times and the gun had jammed. You also told police that Thomas had jumped at you and you had pushed him off and chucked the gun and it had gone back in place and that you "*shoot he till it did empty.*"

[13] **The Allocutus:** Following an agreement between the learned Director of Public Prosecutions and your attorney-at-law, Mr. Marlon Gordon who said that you wished to clarify a particular aspect of your written statement, the *allocutus* was put to you on the 4<sup>th</sup> April, 2013. During your lengthy *allocutus*, you sought to amplify one aspect of your written police statement and to explain the nature of the conversation which you had had with the deceased immediately prior to the shooting and the circumstances in which you had fired at the deceased.

[14] You told the Court that when the deceased man got out of his car, you had asked him how come the police "*deal with [you] unfair*". According to you, you told the deceased man that you had gotten a lawyer to deal with the case so that you would know what was happening with the case, but that "*up to now, nobody ain't telling [you] if [you] got to go to court or if he get charge or nutten so*".

[15] You told the Court that the deceased man had put his hand in his pocket and had come to you and told you that: "*nobody ain't care nothing 'bout [you] and what [you] doing by he place.*"

[16] You told the Court that from the time the deceased man put his hand in his pocket, you decided not to wait like the last time. According to you: "*...the last time when [you] tried to talk*

*to this man, this man chopped [you], break [your] two fingers, chopped [you] down through [your] head and chopped [you] on [your] hand..”.*

[17] You explained that you had then fired the gun, but that the gun had discharged 4 shots and jammed. You told the Court that after being shot, the deceased had run at you and tried to grabble you, but that you had pulled back and chucked the gun and that when the deceased man had put his hand on the gun, the gun had fired back and shot him “*through the hand and...in he face*” and that the deceased man had then “*dropped ‘pon the ground.*”

[18] You insisted that the deceased man “*came up to you*” and that you had not “*went to him.*”

[19] **Basis on which the plea was accepted:** Following the outline of facts, the learned Director of Public Prosecutions told the Court that the killing was deliberate, premeditated and planned because you actually cogitated, deliberated and went specifically to the deceased man’s home where you awaited his arrival and return. He pointed out that premeditation is the *mens rea* for the offence of murder.

[20] The learned Director however explained that the Crown had accepted your plea to manslaughter because:

*“... at the time of the shooting, [he was] also satisfied that Mr. Armstrong was equally laboring under severe provocation of the circumstances that led to his actions.”*

[21] The Director of Public Prosecutions adverted to the definition of provocation in section 5 of the *Offences Against the Person Act, Cap. 141* where provocation is explained, *inter alia*, in the following terms:

*“...evidence on which a jury can find that the accused was provoked, whether by things done or by things said or by both together, to lose his self-control...and... which was enough to make a reasonable man do as [the accused] did...”*

[22] The learned Director then referred the Court to what he described as “the slow burn” or “cumulative” provocation cases, which the authors of *Blackstone’s Criminal Practice, 2011, para B1.28* recognize as arising in situations in which the last instance of provocation closest to the time of the killing amounts to “*the straw that breaks the camel’s back*” or “*the trigger which causes the accused’s self-control to snap*”. [See also *Archbold’s Criminal Pleading, Evidence and Practice, 2004, paragraph 19-581[1]*; *R v. Thornton, 96 Cr.App.R.112 @ p.118* and *R v. Ahluwalia, 96 Cr. App.R. 133.*]

[23] Applying those principles to the facts of the current case, the learned Director of Public Prosecutions informed the Court that your case:

*“...would be on the very upper end of the scale in terms of moral culpability....his sense of being aggrieved at the justice system not delivering justice...I understand he did not turn up for the hearing, but I think it might have been, he might not have been given proper notice, and that does create a grave sense of loss and grievance, especially if you have been seriously wounded, may not have been even paid for the job by the man and the man walks out free.”*

[24] Mr. Leacock told the Court that your actions were not something that one can encourage because it will lead to “*the concept of jungle justice*”. He observed that you cannot be permitted to take the law into your own hands, as you have done. He however, advised the Court that inasmuch as you had done so, it was necessary to examine your mental state at the time.

[25] The learned Director advised the Court that having reviewed the file he was satisfied that you were:

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1[1] “A general approach can, however, be discerned from the authorities, namely that evidence of previous provocative acts or past conduct, particularly in cases of domestic violence, is admissible in order to place in its appropriate context the reaction of the accused to the alleged provocation on the occasion of the killing.”See *Archbold, 2004 @ p.1708.*

*“...laboring under the provocation of being physically injured, complying with the law and having the matter reported, the man being charged and the case being disposed of with no justice to [you]....”*

[26] Commenting on the explanation which you gave to the Court April 4<sup>th</sup>, 2013 when the *allocutus* was put to you, Mr. Leacock further advised the Court that:

*“What we have heard so far is totally consistent with provocation. He gave additional detail as to what happened, the moments immediately before the shooting. But what he was laboring under, from the record so far, is that ...the case was dismissed or thrown out quite wrongly so, because the criminal justice system had not even been fully triggered at that point, but we have to judge him on his state of mind...He went there armed under the mistaken impression...as a result of a conversation that might have only precipitated or accelerated what he was going to do, but he clearly went there with the purpose to administer what can be considered his own justice perhaps. And it was only triggered by not getting any apology, not getting any kind of compensation...and thinking mistakenly that his case was thrown out. Now in law those factors would constitute an act or series of acts or words spoken as a result of the conversation they had, which could cause a reasonable man judged by objective standards to have lost his self-control. And it is on that basis that the plea is accepted and...will remain accepted by the Crown.”*

[27] **Your Criminal Antecedents:** Sergeant of Police, No. 813 Tyrone Leacock informed the Court that as at March 22<sup>nd</sup>, 2013, you had 5 criminal convictions dating back to October 21<sup>st</sup>, 1999 when you were convicted of having in your possession and trafficking in the controlled drugs, cannabis and cocaine.

[28] **Your Pre-Sentence Report:** As required by section 37(1) of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was ordered and was read into evidence by Senior Probation Officer, Ms. Angela Dixon on May 2<sup>nd</sup>, 2013 and has since been reviewed by the Court.

[29] The Report has shed some light on your family, educational and social background, your employment history and your current attitude to the offence.

[30] You have expressed remorse for your actions, particularly in the light of the fact that killing took place in the presence of the deceased man's daughter and grandson.

[31] The Report also reveals that after serving a 2-year sentence for possession and trafficking in illegal drugs, you made a concerted effort to follow a positive path in life by securing employment and utilizing your skills within the electrical field.

[32] The Probation Officer characterized the current offence as an error in judgment in which you allowed your emotional frustration to overpower you.

[33] The Report also includes victim impact information taken from the deceased man's daughter who informed the Probation Officer that the traumatic events continue to linger in her mind and that of her son. The deceased man's other children are also still very angry over the loss of their father's life. The deceased man's daughter indicated that you had apologized to her for your actions, but states that while she has forgiven you, she wishes you to be held accountable for your actions.

[34] **Your Psychiatric Report:** At the request of Defence Counsel, Mr. Marlon Gordon, you were remanded to the Psychiatric Hospital in March 22<sup>nd</sup>, 2013 and a Psychiatric Report was ordered. The Report was read into evidence by Senior Consultant Psychiatrist, Dr. Beresford Connell on Tuesday April 2<sup>nd</sup>, 2013 and has also been accepted by the Court.

[35] Dr. Connell informed the Court that you had no previous interaction with the Psychiatric Hospital and that on your remand by this Court to the hospital for a psychiatric evaluation, you showed no signs or symptoms of any psychiatric illness.

[36] Dr. Connell told the Court that you gave a history of having an assault case that you thought was unfairly handled by the police which had frustrated you. Dr. Connell also told the

Court that you reported feeling stressed out 2 to 3 days prior to the incident as a result of your perceived unjust treatment by police.

[37] While he could not extrapolate your mental state at the time of the incident in 2012 from your presentation at the hospital on 2013-03-22, Dr. Connell surmised that you were dissatisfied with the treatment of your police complaint and this led to your undue stress and apparent anger.

[38] **Your Psychological Report:** At the request of your Defence Counsel, a Psychological Report was also ordered. The Report was prepared and read into the record by Prison Psychologist, Mr. Sean Pilgrim on May 30<sup>th</sup>, 2013 and has been considered by the Court.

[39] Mr. Pilgrim's test results suggest that you are experiencing challenges in several areas of your life but that you demonstrate limited personal insight into the causes of your actions and can only articulate a simplistic understanding of how you should proceed to address the challenges you face.

[40] In particular, while you have demonstrated some understanding of the importance of laws and social expectations as to how you should behave, you have a very simplistic and naïve understanding of these issues. Additionally, you have no understanding of how rules can affect your life and how you can learn from mistakes.

[41] Mr. Pilgrim has recommended that during your sentence, you be enrolled in any available programs and interventions while detained at HMP Dodds.

[42] **Discussion:** It is now for this Court to determine what is the appropriate sentence to be imposed upon you in this matter having regard to its judicial obligations under sections 35 to 41 of the Penal System Reform Act, Cap. 139.

[43] **Reasons for imposing a custodial sentence - s.35:** Having considered the outline of facts, the various reports, together with the *allocutus* and having also considered the tragic

circumstances in which Elvin Thomas lost his life at your hands outside his home in full view of his family on the night of June 25<sup>th</sup>, 2012, I have formed the opinion for purposes of section 35(2)(a) of the Penal System Reform Act that the offence is so serious that only a custodial sentence can be justified.

[44] The Court determined the seriousness of the manslaughter offence in this case having regard to the following factors:

- 1) The fact that the killing was premeditated and deliberate. In this regard, the Court fully agrees with the learned Director that erroneously believing the wounding case against the deceased man to have been dismissed, you went to the deceased man's home, armed in advance with a gun. Your actions clearly show that this was no spontaneous action on your part and that you went to the deceased man's home that night armed with a firearm with the intention of taking the law into your own hands.
- 2) This finding is supported by the fact that you were heard by the deceased man's daughter telling the deceased: "*Who tell you hit me. I tell you I gine come back for you*".
- 3) The Court has taken into account the fact that a firearm was used and that you shot the deceased man multiple times. Additionally, after clearing the gun which you say had jammed, you persisted in firing shots at the deceased man, and ultimately shot him until the gun was empty;
- 4) The Court is satisfied that the force used on the deceased man was excessive and wholly out of proportion to any attack which you may have perceived would have been launched on you by the deceased man who according to you had put his hand in his pocket and come towards you.
- 5) Your intention to kill the deceased man or to cause him really serious bodily harm is evident from the pathologist's report which discloses that the deceased man sustained 8

gunshot wounds, notably, at the base of the neck, the upper left chest, the stomach area, the left arm and the right hand.

[45] In keeping with the *Suratan*<sup>2[2]</sup> sentencing guidelines adopted by the Barbados Court of Appeal in the case of *Ricardo Deverne Griffith v. The Queen Criminal Appeal No: 6 of 2007; 2009-06-19*, I have also borne in mind that as this is a case where the Crown has accepted a plea of not guilty of murder but guilty of manslaughter by reason of provocation, I am, as the sentencing judge, required to make a number of assumptions in your favour by way of mitigating the seriousness of the offence.

[46] Assumptions: Applying the *Suratan* guidelines, the Court has therefore assumed firstly, that the seriousness of this offence has been mitigated by the fact that at the time of the killing, you lost your self control.

[47] The Court has, secondly, assumed that you were caused to lose your self control by the following facts and circumstances disclosed on the record:

- a) the fact that you were unlawfully wounded in October 2012 by the deceased man who had chopped and wounded you on your left shoulder, on a finger of your left hand and in your head following a dispute about some electrical work which you were doing at his house;
- b) the fact that after attending the Magistrate's Court on two occasions in connection with the wounding case only to have the case adjourned once again, you mistakenly formed the impression that your case had been thrown out and that you had been dealt with unfairly;

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<sup>2[2]</sup> *Attorney General's Reference (Nos. 74, 95 and 118 of 2002) (Suratan and others) (2003) 2 Cr. App. R. (S) 42.*

- c) laboring under the misapprehension that the criminal justice system had not worked for you, you armed yourself with a firearm and went to the deceased man's home ostensibly to talk to him;
- d) when the deceased man got out of his car, you had asked him how come the police "*deal with [you] unfair*";
- e) you deliberately shot at the deceased man and, according to you, at the time you did so, you felt aggrieved by the fact that the deceased man had offered you no apology for cutting you, but had instead put his hand in his pocket and had come to you and told you that: "*nobody ain't care nothing 'bout me and what I doing by he place.*"
- f) Against the background of the deceased man's past conduct and previous provocative acts towards you, his actions coupled with the words which the deceased man spoke to you immediately before the killing amounted to "*the straw that broke the camel's back*" or "*the trigger which caused your self-control to snap.*"

[48] Thirdly, the Court has assumed that your loss of self-control in the several circumstances just outlined was reasonable in all the circumstances, even bearing in mind that persons are expected to exercise reasonable self-control over their emotions and that as society advances it ought to expect higher measures of self-control.

[49] Finally, the Court has assumed that the circumstances surrounding this killing were such as to make your loss of self-control sufficiently excusable to reduce the gravity of your actions from murder to manslaughter.

[50] Ultimately, the Court is satisfied that this was an extremely serious case of manslaughter where death was caused by a firearm and where, notwithstanding the fact that you were

provoked and lost your self-control, the aggravating circumstances surrounding the killing place the case on the borderline of murder and close to the top of the manslaughter scale.

[51] The Court is satisfied that this case has all the hallmarks that place it near to murder. The facts and circumstances of the killing show that you came as close to the intent required for murder as is possible and displayed a reckless disregard for the possibility of death resulting from your unlawful conduct.

[52] On your own admission, you went to the deceased man's home, armed with a gun, and harbouring numerous grievances against him, both real and imagined. Having been previously injured by the deceased man and mistakenly believing the wounding case against him to have been dismissed, you asked him how come the police had dealt unfairly with you.

[53] Around the time of the shooting, the deceased man's daughter heard you reminding the deceased man of your earlier threat to him to come back for him. You shot the deceased man no less than 8 times in vulnerable areas of his body and, on your own admission, you continued to fire the gun at him until it was empty.

[54] Ultimately, the Court was satisfied that your conduct as the offender took the offence beyond the threshold for non-custodial punishment and most decidedly into the realm of custodial punishment.

[55] The Court adverted to section 6 of the *Offences Against the Persons Act, Cap. 144* which stipulates that the permitted maximum custodial sentence which may be imposed on any person convicted of manslaughter is imprisonment for life.

[56] As is clear from the manslaughter guidelines established by the Barbados Court of Appeal in *Pierre Lorde*, the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

[57] In issuing its manslaughter guidelines in *Pierre Lorde*, in 2006, the Barbados Court of Appeal stressed that the guidelines were “*not to be construed as putting sentencers in a kind of straight jacket or fettering in any way the judicial discretion which must remain at the heart of the sentencing process.*”

[58] In the 2011 Barbados Court of Appeal decision of *Curtis Joel Foster, (DPP’s Reference No 1 of 2010, unreported decision of 11 February, 2011) Peter Williams JA* observed that the guidelines in *Pierre Lorde* are now well established and are routinely followed. He suggested that it is helpful to consider the 4 guidelines in *Pierre Lorde* on a sliding scale of 1 to 4, with 1 being reserved for the most serious offences and 4 for the least serious.

[59] Against the foregoing background, I am satisfied that the task which lies before me in my role as sentencer in this matter, is to seek as far as possible to position this case within the appropriate *Pierre Lorde* guideline while at the same time complying with the procedures set out in the *Penal System Reform Act*.

[60] During the course of legal submissions, Defence Counsel, Mr. Gordon submitted that in his view this case fell within guideline 2 of the *Pierre Lorde* Guidelines. He submitted that as the case was not contested, the range of sentence should be within 14 to 18 years. Mr. Gordon submitted that this case fell below the top range in guideline 2 and suggested that a sentence of 14 or 15 years would be reasonable having regard to all the circumstances.

[61] For his part, the learned Director of Public Prosecutions, Mr. Leacock submitted that this case fell on the borderline of murder. He submitted that the case should be treated as close to murder and should attract a starting point of 25 years from which appropriate discounts should be given for the guilty plea, other matters and time spent on remand.

[62] As the Court has already stated, this was an extremely serious case of manslaughter where death was caused by a firearm and where, notwithstanding the fact that you were provoked and lost your self-control, the aggravating circumstances which surrounded the killing place the case on the borderline of murder and close to the top of the manslaughter scale.

[63] While provocation is admittedly a mitigating factor to be taken into account in determining offence seriousness, in view of the numerous aggravating factors in this case, the Court is satisfied that it has not significantly mitigated the seriousness of this particular manslaughter offence which remains on the borderline of murder.

[64] Your actions took the life of Elvin Thomas and the deliberate discharge by you of multiple gunshots in vulnerable areas of his body fix you with maximum culpability for his death.

[65] The Court cannot ignore the fact that harbouring grievances (both real and imagined) against Elvin Thomas, you deliberately armed yourself with a lethal weapon and lay in wait for him. After confronting him in his driveway and following an altercation with him, you shot him to death.

[66] The Court accepts that, as the learned Director of Public Prosecutions rightly pointed out, you chose to take matters into your own hands rather than to let the law take its course. The Court cannot condone what you did, as to do so would give credence to “jungle justice” and outdated notions of vengeance and revenge which are anathema to the rule of law on which this society is based.

[67] The Court was firmly of the view that this is a case where the seriousness of this offence must be reflected in the sentence passed by the Court. The Court is satisfied that notwithstanding that you were provoked and lost control, the facts of this particular offence place the offence on the borderline of murder and close to the top of the manslaughter scale. The Court further considered that the *Pierre Lorde* guidelines as currently framed are conceptually inadequate to enable the Court to fix an appropriate starting point which would enable the Court to do justice in this case.

[68] In the circumstances, doing the best that it can do within the existing *Pierre Lorde* Guidelines, the Court in the exercise of its sentencing discretion, established 25 years (Guideline 1) as the appropriate *starting point* for determining the length of your sentence.

[69] **Length of the Custodial Sentences – Section 36:** Having considered the gravity of the offence and established the appropriate starting point for determining the length of your sentence, the Court kept in mind the general judicial guidelines set forth in section 41(2) of the Act, which require, *inter alia*, that the gravity of the punishment must be commensurate with the gravity of the offence.

[70] The Court next turned to section 36 of the *Penal System Reform Act* and considered the issue of proportionality with a view of determining what length of sentence would be appropriate to do justice in this case.

[71] Focusing next on you as the offender, the Court then took into account the factors which, in the view of the Court, have reduced the seriousness of the offence and reflect a level of personal mitigation of you as the offender. These were:

- a) firstly, your guilty plea and in this regard, a discount of 4 years was allowed;
- b) the fact that you were provoked and lost your self-control;
- c) an appropriate discount was also allowed to take account of the fact that you cooperated with the police investigations; and
- d) the remorse you have expressed for your actions.

[72] **Time spent on Remand:** According to Prison Officer Bentley Boucher, as at May 30<sup>th</sup>, 2013 you have spent a total of 319 days on remand awaiting the final disposition of this matter. To this period the Court had added the additional 143 days which have elapsed since May 30<sup>th</sup>, 2013 up to today's date.

[73] In keeping with the CCJ decision of *Romeo Hall*, you will be given full credit for the 462 days [i.e. 1 year 97 days] you have spent on remand to date awaiting your trial and the final disposition of this matter.

[74] **Order of the Court:** *Everson DeCoursey Armstrong*, you are hereby sentenced to the term of imprisonment of **18 years** for this offence to commence with immediate effect.

[75] From this sentence and in keeping with the CCJ decision in *Romeo Hall*, there will be deducted, the full period of 462 days [i.e.1 year and 97 days] which you have to date spent on remand since July 16<sup>th</sup>, 2012 awaiting final resolution of the matter. In the result, you will be required to serve the remaining **16 years, 268 days** in custody for this offence.

[76] During your incarceration, and with the aim of your rehabilitation, you will undergo such psychological interventions, counseling and programs as may be recommended by the Prison Psychologist, Mr. Sean Pilgrim to assist you in managing your interpersonal relationships and addressing the areas of concern identified in his Psychological Report of April 29<sup>th</sup>, 2013.

[77] During your incarceration also, you are strongly advised to enroll in any available skills or vocational program which will enable you to acquire a skill or trade as this should enhance your ability to obtain gainful employment on your release from prison.

[78] The Superintendent of Prisons is directed to make the necessary administrative and logistical arrangements to ensure that the order of this Court is put into effect.

[79] This is the order of the Court.

**Maureen Crane-Scott**  
**Judge of the High Court**  
**2013-10-22**